IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 177 of 2006
With
SPECIAL CIVIL APPLICATION No. 5403 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAURASHTRA UNIVERSITY - Appellant(s)
Versus
MANJULABEN NARENDRABHAI LAKTARIA WIFE & 2 - Respondent(s)

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Appearance :

LPA NO. 177 OF 2006
MR JR NANAVATI WITH MR AR THACKER for Appellant(s) : 1,
MS MAMTA R VYAS for Respondent(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4
MR MR MENGDEY, AGP for Respondent(s) : 2,
MR MITUL K SHELAT for Respondent(s) : 3,

SCA NO. 5403 OF 2003
MR MITUL SHELAT for Appellant(s) : 1,
MS MAMTA R VYAS for Respondent(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4
MR MR MENGDEY, AGP for Respondent(s) : 2,
MR JR NANAVATI WITH MR AR THACKER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Since the appeal as well as the writ petition raise common questions of law and fact regarding entitlement of a retired University employee(who unfortunately passed away during pendency of these proceedings) to pensionary benefits and are directed against the same judgement of the Gujarat University Tribunal, with consent of the learned advocates for the parties, the appeal and the writ petition have been heard together and are being disposed of by this common judgement.

2. Respondent no.1 in the appeal as well as writ petition -N.T. Lakhtariya(here-in-after referred to as “the employee”), was employed as an Assistant Teacher in Saurashtra High school from 1st April, 1958 to 16th July, 1973. He was thereafter, employed as Assistant Teacher in Lal Bahadur Shastri Vidayalaya at Rajkot from 17th July, 1973 to 31st January, 1980. Both the institutions were grant in aid schools. Thereafter, the employee was appointed by the Saurashtra University as the Project Officer in the Adult Education Centre from 1st February,

1980 and subsequently, promoted as Assistant Director in the same department on 30th June, 1992. The employee continued to hold the said post till 31st January, 1998, when he retired upon attaining the age of superannuation i.e. at the age of 60 years after rendering 40 years service. Since he was not paid pension and other retiral benefits as claimed by him, he approached the Gujarat University Services Tribunal by filing Application no.12/1999. The Tribunal by its impugned judgement dated 28th September, 2001, directed the Saurashtra University to get the employee's pension fixed with the assistance of the State Government and to pay the same to the employee and also directed that University Grants Commission (here-in-after referred to as “UGC”) shall thereafter, pay the said amount to the University. Saurashtra University filed Special Civil Application No. 952/2002 challenging the said order of the Tribunal. This petition came to be dismissed by the learned Single Judge by order dated 7th May, 2002 with a minor modification of the order of the Tribunal. The UGC challenged the said order by filing Special Civil Application No.5403/2003 which came to be admitted and by interim order dated 10th January, 2005, a Division Bench of this Court granted interim stay of the direction of the Tribunal requiring the UGC to pay pension to the employee through the University. Since the

petition filed by the University was already dismissed, the employee had instituted execution proceedings before the Tribunal. In view of the interim stay operating in favour of UGC, the execution proceedings continued against the University. Thereupon, the University filed Letters Patent Appeal with an application for condonation of delay of about 482 days. That application came to be dismissed. Aggrieved by the said order, Saurashtra University moved the Hon'ble Supreme Court. The University succeeded in the appeal. The Apex Court by order dated 25th November, 2005 set aside the order of this Court dismissing Letters Patent Appeal on the ground of limitation, remitted the case back to this Court for deciding Letters Patent Appeal on merits, after condoning the delay in filing the Letters Patent Appeal. While passing this order, Apex Court took into account the fact that the main issue was already pending for consideration of this Court at the instance of the UGC. In view of the above order of the Apex Court, the Special Civil Application filed by the UGC and appeal filed by Saurashtra University are listed before us for considering the challenge to the order of the Tribunal on merits.

3. Mr. Mitul Shelat, learned advocate for UGC submitted that the UGC is a statutory body set up in 1956 to make provisions for coordination and determination of standards of teaching in

Universities and for this purpose the Commission launches various Schemes to be run by Universities and pays grants to the Universities for this purpose. The UGC has no funds of its own but receives funds from Government of India to be given by way of grants to Universities for implementing such schemes. The UGC had accordingly launched National Adult Education Programmes in the year 1978 for involving Universities and colleges through their students and teachers to provide education to such section of the communities which were earlier denied access to such opportunities. A number of Universities and colleges in various States of the country were involved in this programme. The Universities accordingly established Adult Education and Extension Services Centres. For employing teaching as well as non-teaching staff in such Centres, UGC provided grants to Universities and issued guidelines inter-alia providing that the teaching as well as non teaching staff of such Adult Education Centres be treated like other employees of the University. He submitted that these grants were provided for paying salary to the teaching and non teaching staff employed by the University for running these Centres but the UGC never employed any staff. It is therefore, vehemently submitted that Tribunal erred in directing the UGC to reimburse the pension to be paid by the University to the employee

concerned(i.e. respondent no.1 herein).

4. Mr. J.R. Nanavati with Mr. A.R. Thakkar appearing for Saurashtra University have submitted that the University had established Adult Education and Extension Services Centre in view of the Scheme launched by the UGC and with the grant given by UGC for payment of salary to teaching and non teaching staff in such Centres. It is therefore, submitted that if the UGC does not give any grant for payment of pension to the employees retiring from service in the Adult Education Centre, the University has no funds of its own to pay such pensionary benefits. As regards the other employees of the University, it is stated that these employees are governed by various Government Resolutions issued from time to time and in particular last consolidated Government Resolution dated 26th September, 1989. He stated that prior to 1st April, 1982, the University employees were governed by Contributory Provident Fund Scheme. Pension Scheme was introduced by the Government for the first time by resolution dated 15-10-1984. As per the said Government Resolution, members of the existing University Staff recruited before 1st April, 1982, were required to exercise the option whether they wanted to switch over from the Contributory Provident Fund Scheme to the Pension Scheme. The University staff recruited on or after 1st April, 1982, were automatically

governed by the Pension Scheme. The staff members recruited before 1st April, 1982, had to exercise their option in the prescribed form and communicate the same to the Director of Higher Education who is the Competent Authority to sanction pension/gratuity and other retiral benefits admissible under the said Government Resolution which is made applicable to the staff of all the Universities in the State of Gujarat. It is submitted by the learned Counsel for the University that since the Director of Higher Education has not sanctioned the pension of the employee concerned, the University is not in a position to pay any pension to the employee. It is therefore, submitted that if the direction given by the Tribunal against the UGC to reimburse the pension amount to the University is to be set aside, directions will have to be issued to the State Government to pay the pension to the concerned employee.

5. On the other hand, Mr. M.R. Mengdey learned AGP has contested the proceedings and submitted that the retired employee is not entitled to claim any pension from any authority and much less from the State Government. The employee was appointed on a project with salary grant from UGC. The State Government had never paid any salary to the concerned employee who had all along rendered services from 1980 to 1998 on a UGC sponsored project. Hence, the employee was

not entitled to get any pension from the State Government. The State Government had no concern with the matter, whether at the time of creation of the post or at the time of the employee's selection and appointment. The University is required to take approval of the State Government for appointing any member of the teaching or non teaching staff and it is only when such approval is granted by the Director of Higher Education that the State Government releases the salary grant for payment of salary to such employee. Since no such approval was obtained at the time of employee's appointment by the University and since otherwise also, the State Government had never given any salary grant to the University for this purpose, the State Government is not liable to pay any pension to the concerned employee i.e. respondent no.1 herein.

5.1 Mr. Mengdey has further submitted that after launching the Adult Education and Extension Service Programme in the year 1980, UGC had requested the State Government to take over the project in the year 1997 and thereafter, in the year 2000 but on account of financial constraints, the State Government had declined to take over the project and, therefore, the project came to an end with effect from 31st March, 2000. It is submitted that in the above background directing the State

Government to pay pension to respondent no.1 would amount to directing the State Government to take over the project. Strong reliance has been placed on the decisions of the Apex Court reported in (2002) 10 SCC 656 and (2003) 10 SCC 405.

6. Ms. Mamta Vyas, learned advocate appearing for the heirs of respondent no.1-retired employee has submitted that the first respondent had indisputably rendered services in two grant-in-aid institutions between 1958 and 1980 and the persons employed in those institutions have been granted the benefit of the Pension Scheme by the relevant Government Resolutions. So also, all other employees of the Saurashtra University have been given the benefit of the Pension Scheme at their option to switch over from the Contributory Provident Fund Scheme to the Pension Scheme. The first respondent and two other employees employed in the Adult Education and Extension Services department of Saurashtra University have been denied the benefits of the Pension Scheme and have been meted out discriminatory treatment. Right from the date of launching the Scheme in 1978-1980 and, thereafter, also UGC had called upon the Universities including the Saurashtra University to treat the persons employed in Adult Education and Extension Services Project like all other employees of the Universities. When other

employees were given option of switching over from the Contributory Provident Fund Scheme to the Pension Scheme, the first respondent was also given such an option in the year 1989 and the University had thereafter treated the first respondent as covered by the Pension Scheme. That is why at the time of his retirement on 31st January, 1998, the first respondent was not paid any Contributory Provident Fund for any part of the period from 1980 to January 1998 and the first respondent was only paid leave encashment and his own contribution to the General Provident Fund.

6.1 Ms Vyas submitted that as per the Government Resolution dated 26th September, 1989, all the members of the teaching as well as non teaching staff of the Universities appointed before 1st April, 1982 were entitled to switch over from the Contributory Provident Fund Scheme to the Pension Scheme and the first respondent had accordingly exercised the option. She further submitted that the Tribunal has rightly directed the University to compute and pay the pensionary benefits to the first respondent for the services rendered by him in two grant-in-aid institutions from 1958 onwards till the date of his retirement as an employee of the Saurashtra University on 31st January, 1998. It is also submitted that if the first respondent had continued to be an employee of either of these

non Government aided schools, the first respondent would have got the benefit of the Pension Scheme at the time of superannuation. Therefore, by joining the Saurashtra University, the first respondent could not be worse of particularly, when all along the UGC had required the Saurashtra University to treat the employees of Adult Education Centre like all other employees of the University.

7. Having heard the learned advocates for the parties, we are of the view that if the question posed was whether the State Government could be compelled to pay pension to the person employed on a UGC funded project, our answer might in all probabilities have been in the negative. We must, however, note that the question which calls for our consideration is required to be framed and answered in light of the peculiar facts of this case.

8. There is no dispute that the first respondent had rendered services as an Assistant Teacher in two non Government schools which were receiving grant-in-aid from the State Government for payment of salaries to their staff and also that while employees of those schools (like all other University employees) were covered by the Contributory Provident Fund Scheme, they were all brought under the Pension Scheme by permitting them to switch over from the

Contributory Provident Fund Scheme to the Pension Scheme. Hence, if the employee had continued to serve those grant-in-aid schools, there would have been no dispute about his pension entitlement. There is also no dispute about the fact that the first respondent was employed by the Saurashtra University in the year 1980 and continued in its employment till the date of his retirement on 31st January, 1998, upon attaining the age of superannuation which was 60 years. After having rendered 22 years of services in grant-in-aid educational institutions admittedly covered by the Pension Scheme, without any break in service, the employee was appointed by the Saurashtra University as a Project Officer in the Adult Education and Extension Services Department in the year 1980. He was thereafter, promoted as Assistant Director in the year 1996. A duly constituted committee of the University had selected him for the said post of Assistant Director and accordingly, when the first respondent retired from service on 31st January, 1998 on superannuation, he had already rendered 22 years of qualifying services in two grant in aid institutions and 18 years of qualifying service under the Saurashtra University. If the first respondent was not to be governed by the Pension Scheme for which he had already exercised option under the Government Resolution dated 26th September, 1989, when other University

employees were also offered similar options, the University would have paid him the employer's contribution to the Provident Fund for the entire period from 1980 till 31st January, 1998. The material on record indicates that no such amount was paid even for the period from 1980 to 1989. In this view of the matter, it is not open to any authority and particularly, for Saurashtra University to deny the benefits of the Pension Scheme to the first respondent on the ground that the UGC which was giving the grants for Adult Education Centre does not agree to pay pension to the first respondent.

9. We, however, find considerable substance in the submissions of Mr. Mitul Shelat for UGC that UGC is a statutory Commission set up for coordination and determination of standards of teaching in University and that when it launches programmes and provides grants, persons employed on such programmes would not become the employees of UGC. Otherwise thousands of persons employed on various projects funded by UGC all over the country would be required to be treated as the employees of UGC. We also notice that the first respondent had not gone to the University Services Tribunal with a case that the UGC was liable to pay him the pension. In fact, the first respondent had gone to the Tribunal with a case that the University and the State

Government were liable to pay him the pensionary benefits and it was the Tribunal which took the view that because the University was paying salary to the employee (applicant before the tribunal) from the grants made available by UGC, liability to reimburse the University for pension was also fastened by the Tribunal on UGC. The first respondent was never employed by UGC and it is not at all possible to sustain the direction given by the Tribunal requiring UGC to reimburse the pension to be paid by the University to the first respondent herein.

10. We may also note for the record that Mr. Shelat, learned advocate for the UGC had also submitted that in view of the provisions of the Gujarat University Services Tribunal Act, 1983, particularly, section 8 thereof, the Tribunal had no jurisdiction to issue any direction to the UGC. We do not express any opinion on this preliminary contention as in our view the direction issued by Tribunal against the UGC is even otherwise required to be set aside on merits.

11. The question would still survive whether any direction is required to be given to the State Government for paying the University for the pensionary benefits payable by the University to the first respondent.

12. As already indicated earlier, the first respondent was appointed by the Saurashtra University as a Project Officer on 1st February, 1980 and, thereafter, promoted as Assistant Director in the year 1992 and continued on the same post in the year 1996 till retirement of the first respondent on 31st January, 1998. As per the directives of the UGC, the first respondent was to be treated like all other employees of the University and Saurashtra University had also treated the first respondent like all its other employees including in the matter of offering option for switching over from the Contributory Provident Fund Scheme to the Pension Scheme under Government Resolution dated 26th September, 1989. That is why when the first respondent retired on superannuation on 31st January, 1998, all that he was paid was leave encashment allowance and his own contribution to the General Provident Fund and nothing was paid to him by way of employer's contribution to the Provident Fund either for the period from 1989 (when the option was exercised) till the date of retirement or even for the period from the date of appointment in 1980 to 1989. This conduct on part of the University is sufficient to hold that the first respondent was an employee of the Saurashtra University like any other employee and was therefore, entitled to get benefits of the Pension Scheme for which he had duly exercised

his option along with the other employees of the University in the year 1989. It is not the case of the State Government that the first respondent was appointed on a post which was not a sanctioned post, because the post was created by the University itself albeit with the salary grants made available by the UGC. In the facts and circumstances of the case, particularly, in view of the fact that the first respondent had already rendered 22 years of service in grant in aid institutions, employees of which were subsequently covered by the Pension Scheme and also in view of the fact that all other employees of the Saurashtra University were also covered by the Pension Scheme under the aforesaid Government Resolution dated 26th September, 1989, we are of the view that the University is bound to pay all the pensionary benefits to the first respondent as payable under the Government Resolution dated 26th September, 1989 and that it will be open for the University to recover the said amount from the State Government which had agreed to bear the burden of the Pension Scheme in respect of teaching as well as non teaching staff of the University. Of-course, the amounts which the first respondent had received by way of employer's contribution to the Provident Fund for the services rendered by him between 1958 and 31st January, 1980 shall have to be refunded and credited to the Government as provided for

in paragraph 10 of the Government Resolution dated 26th September, 1989 which provides that employees who got retirement benefits of CPF, gratuity etc., for services rendered by them in the earlier institutions before joining the University shall have to refund such benefits which shall be credited to the Government with such amount of interest and other charges as payable under the said Government Resolution dated 26th September, 1989.

13. We make it clear that we may not be treated to have laid down any principle that a person employed on any project of the University receiving grants from any other source is entitled to get pension from the State Government. Directions being given in this judgement are being rendered in view of the peculiar facts indicated here-in-above.

14. We may now deal with the decisions relied upon by learned AGP Mr. Mengdey. In **Dhyan singh and others v. State of Haryana and others** (2002) 10 Supreme Court Cases 656 has been relied upon in support of the proposition that services rendered under a Scheme financed by the UGC, cannot be considered as services rendered in the University, therefore, eligible for entitlement of pensionary benefits under the Government Resolution under consideration. The petitioners there were engaged for a number of

years under the Rural Education Literacy Project/State Adult Education Programme. Upon closure of the scheme their services were terminated. In the litigation challenging their termination, the Counsel for the State fairly stated that Government was prepared to absorb them in the State Government services as and when the vacancies in the cadre of Social Studies Teachers and Masters were available. The petitioners were accordingly recruited for such posts as fresh recruits. They again approached the High Court for fixation of their pay after taking into account the past service rendered under the Scheme and also for taking into account such service for the purpose of fixation of their pension.

14.1 It was in the context of the above facts that the Apex Court held that the continuance/engagement of the petitioners under such specific Scheme cannot be held to be employment under any establishment of the Government and that the employment under such scheme not being a part of the the formal cadre of the State Government, the period for which an employee rendered service under such scheme cannot be counted either for deciding their pensionary benefits or even for fixing their salary for the post in which they are regularly absorbed.

14.2 Facts of the instant case are however, vitally different. As already noted, the employee was appointed by Saurashtra University as its own employee. For other employees of Saurashtra University on regular establishment, as in all other Universities in the State, Pension Scheme was introduced by the State Government. For existing employees, an option was given whether to switch over to Pension Scheme from Provident Fund Scheme. The employee concerned exercised his option within the time permitted. His option was forwarded to the State Government. Though it is the case of the State Government that such option was never formally accepted, the fact remains that admittedly, the same was also not rejected by the State Government. In fact, apparently, employer i.e. Saurashtra University discontinued to make its contribution in the Provident Fund account of the employee. This position continued right from 1989 till 1998 when the employee retired on superannuation. Upon retirement, he was paid only his contribution in the Provident Fund and the employer's contribution was not paid. This would establish that the Saurashtra University considered him as a pension optee. The State Government did not object to this arrangement at any point of time and thus substantially acquiesced in this position. It would therefore, not be possible to treat the employee differently from other employees of the

Saurashtra University receiving pension from the Government.

15. In **Jawaharlal Nehru Technological University v.T. Sumalatha(Smt.)and others** (2003) 10 Supreme Court Cases 405, the concerned respondents were appointed as investigators on a consolidated pay in the Nodal Centre set up by the appellant University under a Scheme sponsored by the Central Government. The Nodal Centre was sanctioned initially for a period of one year and nine months and was thereafter, continued from time to time. The employees who were appointed temporarily on consolidated pay and working in the self-supporting schemes of the University, filed a writ petition before the High Court to regularise their services and to accord them regular pay scales. The High Court directed the University to regularise the services of the petitioners upon completion of three years of service and on their possessing the requisite qualifications. The High Court also directed the State Government to take a decision on the proposal of the University to create additional posts within the specific time limit. The High Court did not accept the contention of the University that writ petitioners were not the employees of the University to whom the benefit of the concerned regularisation scheme could be applied. The Division Bench of the High Court also observed

that all employments in the institute, whether grant for the post comes from the State Government or from the Central Government, are employments in the institute which is an agency of the Government in the State and thus all State Government orders intended to apply to such agency of the State Government have to be applied to the Nodal Centre. In the appeal filed by the University, the Apex Court held that the Nodal Centre for all practical purposes acted as a wing of the Central Government and was not an agency of the State Government. Although, the petitioners were appointed by the University and the Disciplinary control vested with the University, they were proteges of the Central Government. The State Government order for regularisation only covered the categories of employees working in the State Government departments/institutions or bodies controlled or administered by the State Government and in respect of whom the State Government or such bodies had to bear the financial burden on account of regularisation. The Apex Court therefore, held that by virtue of the said order, the State Government did not assume the responsibility of absorbing the staff employed in the organisations or establishments with which it had no administrative or financial nexus. Hence, the Apex Court held that no direction could have been issued to the State Government or to the University to regularise

the services of the concerned petitioners by creating additional posts.

16. As is clear from the forgoing discussion, in the instant case, the employee had never raised any dispute and was not required to raise any dispute regarding absorption in service because he was appointed as an employee of the Saurashtra University and retired as such. All that the University and the State Government has to do is to give him the benefit of the Government Resolution dated 26th September, 1989 which benefit is given to all other employees of Saurashtra University and for which purpose, the first respondent was also offered option which he duly exercised in the year 1989 along with other employees. The University also treated him as entitled to the said benefits. That is why he was not given any amount by way of employer's contribution to the Provident Fund for any part of the services rendered by him for 18 years. As already indicated earlier, the first respondent had already rendered 22 years of service in grant-in-aid institutions which services are to be treated as qualifying service for pension as per the said Government Resolution dated 26th September, 1989.

17. In view of the above discussion, Special Civil Application filed by the UGC is allowed

and that part of the direction given by the Tribunal requiring the UGC to reimburse to the Saurashtra University the pensionary benefits payable to the first respondent herein is set aside. The Letters Patent Appeal filed by the Saurashtra University is disposed of after confirming the findings given by the Tribunal and upheld by the Learned Single Judge that the first respondent herein (applicant before the Tribunal) is entitled to receive the pensionary benefits in terms of Government Resolution dated 26th September, 1989 and any further modifications thereto and with a further direction that the State Government is liable to pay University all the amounts which are so payable to the first respondent.

18. The pension papers of the first respondent shall be prepared by Saurashtra University on the basis of the record available with it and the Director of Higher Education shall consider the same in light of the observations made in this judgement and the Director of Higher Education shall forward the pension papers duly completed to the Director of Accounts and Treasury who shall process the same in accordance with Government Resolution dated 26th September, 1989 as amended from time to time and in light of the observations made in this judgement. The amounts so payable shall be computed within two months from the date of

receipt of the writ of this Court or a certified copy of this judgement whichever is earlier. We may note that the concerned employee expired during the pendency of these proceedings. His heirs are brought on record. The payment of arrears of pension shall be made to the family within a period of one month from the date of computation of the pension payable, as directed here-in-above. It is expected that if the family is entitled to receive family pension as per the rules, the same shall also be made available and it is hoped that the family will not be driven to yet another litigation.

19. At this stage, learned AGP Mr. Mengdey prays for stay of operation of this judgement for sometime. In the facts and circumstances of the case, and particularly having regard to the fact that the first respondent had retired from service as far back as in the year 1998, we decline to grant any stay.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)